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8 AND

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19 *Attorneys for Plaintiff*
20 *Colony Insurance Company*

21 **UNITED STATES DISTRICT COURT**

22 **DISTRICT OF NEVADA**

23 COLONY INSURANCE COMPANY,

24 Plaintiff,

25 vs.

26 NATIONAL FIRE AND MARINE
27 INSURANCE COMPANY; FIREMANS
28 FUND INSURANCE COMPANY; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 2:17-cv-00888-RFB-PAL

**JOINT STIPULATION AND ORDER
FOR CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

Plaintiff Colony Insurance Company (“Colony”) and defendants National Fire & Marine Insurance Company (“NF&M”), Firemans Fund Insurance Company (“FFIC”) and Does 1 through 10 (each a “Party” and collectively, the “Parties”), by and through their undersigned

1 counsel, hereby stipulate, request and jointly move the court to enter into this Stipulated
2 Confidentiality Agreement and Protective Order (the “Stipulated Protective Order”) pursuant to
3 FRCP 26(c)(1). The Parties have agreed and stipulated to the entry of this Stipulated Protective
4 Order for the protection of certain information, confidential records, and related information
5 produced or otherwise disclosed by the Parties in this coverage action as follows:
6

7 1. The Parties anticipate that they may produce or may be required to produce
8 documents, information, or evidence that relates to non-public information that a Party alleges
9 is proprietary or confidential. This Stipulated Protective Order is designed to protect such
10 information from public disclosure.
11

12 2. Any Party may designate certain documents, testimony, or other discovery
13 material, and all copies thereof, as “Confidential” pursuant to the terms of this Stipulated
14 Protective Order. Should any Party disagree with such designation, any other Party may seek
15 judicial relief from same. Documents subject to this Stipulated Protective Order shall include
16 only such material that a Party reasonably believes not to be in the public domain and that
17 contains any confidential information regarding two underlying construction defect actions
18 titled *Alstatt, et al. v. Centex Homes, et al.*, Clark County District Court Case No. A-13-683173-
19 D (“*Alstatt* Action”), and *Ceccarelli Revocable Living Trust, et al. v. Centex Homes*, Clark
20 County District Court Case No. A-15-722350-D (“*Ceccarelli* Action”) (hereinafter referred to
21 collectively as the “Underlying Actions”).
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24 (a) A document or information contained in a document or discovery response given
25 or filed in this lawsuit may be designated “Confidential” by stamping or
26 otherwise marking (in such manner as will not interfere with the legibility of the
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document) each page of a document containing Confidential information with the word "CONFIDENTIAL." Any copies or reproductions, excerpts, summaries or other documents or media that paraphrase, excerpt or contain Confidential information shall also be treated as Confidential pursuant to this Stipulated Protective Order.

3. Any inadvertent failure to designate a document of information "Confidential" during production may be corrected by prompt written notification to all counsel of record. Deposition or hearing testimony may be designated as "Confidential" by an appropriate statement on the record at the time when such testimony is given or upon subsequent written notification to all counsel of record upon review of the transcript. Exhibits which are deemed "Confidential" shall be so designated by stamping the exhibit accordingly.

4. All "Confidential" material shall be used solely for the prosecution or defense of the claims being litigated in this coverage action, or in any case, mediation, or arbitration arising out of, or related to, this coverage action, and for no other purpose. Unless and until the Court rules that documents or information designated as "Confidential" shall not be treated as "Confidential," persons who receive documents or information so designated **shall use and treat it as such, and shall not under any circumstances disclose it to anyone** except to the following persons:

- (a) Named Parties;
- (b) Attorneys for Named Parties;
- (c) Persons employed by the Named Parties or working under the direction of attorneys for the Named Parties, including secretaries and legal assistants, to the

1 extent necessary to perform specific duties in connection with this coverage
2 action.

3 5. After the court enters this protective order, the Parties may share the protected
4 confidential information with the additional following individuals.

5 (a) Independent experts or consultants retained by a Party or an attorney for purposes
6 of this coverage litigation;

7
8 (b) Deponents;

9 (c) The Court and Court personnel, stenographic reporters, videographers at
10 depositions, mediators, arbitrators or any judges in any case, mediation, or
11 arbitration arising out of, or related to, this case, subject to the protections of any
12 Stipulated Protective Order the Court subsequently enters to further preserve the
13 confidentiality of documents used at trial.
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15 6. Prior to dissemination of documents or information designated “Confidential,” or
16 the contents thereof, to a person described in paragraphs 4(a)-(c), and after the court issues its
17 protective order 5(a)-(c), that person shall be advised by counsel making such dissemination of
18 the terms of this Stipulated Protective Order.
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20 7. Subsequent to the entry of the Court’s Protective Order, any Party who seeks to
21 make any document or information designated “Confidential” a part of the record shall file a
22 motion seeking a Stipulated Protective Order permitting the document to be filed under seal;
23 alternatively, the Parties can stipulate to the information as being designated “Confidential” and
24 filed under seal.
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1 8. A Party seeking to seal documents shall submit a separate memorandum of points
2 and authorities seeking such a court order. Any application to seal documents shall be served
3 on opposing counsel together with the documents proposed to be filed under seal. Such service
4 on opposing counsel shall be made timely so as to allow opposing counsel ample time to
5 respond without causing a delay in the proceeding.
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7 9. This Stipulated Protective Order shall remain in full force and effect until
8 modified, superseded, or terminated by written consent of the Parties or by order of the Court,
9 and shall survive the termination of this action.

10 10. Nothing herein shall impose any confidentiality obligation upon information
11 which was already in the public domain.
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13 11. Should any Party violate the protective order entered upon this agreement, upon
14 noticed motion by the Party affected, the court may consider the appropriate sanctions to be
15 imposed.

16 12. Each Party receiving material which has been designated as “Confidential” shall
17 destroy or return all such materials upon the conclusion of this action and any appeals arising
18 therefrom. This requirement shall not apply to Insurance Carriers that have a regulatory
19 requirement and/or company policy to maintain insurance claim files following the conclusion
20 of litigation and/or otherwise are not reasonably able to delete the materials from their filing
21 system. Notwithstanding anything in this Stipulated Protective Order to the contrary, counsel
22 for the respective Parties may retain one copy of the materials designated “Confidential” in his
23 or her stored files for archival purposes, but may not use or disseminate such materials except as
24 required by legal process, court order or law. Further, the Parties may disclose the
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1 “Confidential” materials to other of their attorneys, auditors, accountants, tax preparers,
2 insurers, reinsurers, and retrocessionaires, if any.

3 13. If the Alstatt Action has not concluded at the conclusion of this coverage action,
4 within thirty (30) days after the conclusion of this coverage action, including any appeals taken
5 from a final judgment entered herein, all documents designated “Confidential” and copies
6 thereof shall be returned to the Producing Party, other than that which is contained in pleadings,
7 correspondence, and deposition transcripts. Counsel for the Parties shall either return to that
8 Party or destroy any and all notes, extracts, summaries, and other materials that contain
9 information derived from documents designated confidential within the time period upon
10 consent of the Party who provided the information and certify in writing within thirty (30) days
11 that the documents have been destroyed. This section shall not apply to Insurance Carriers that
12 have a regulatory requirement and/or company policy to maintain insurance claim files
13 following the conclusion of litigation and/or otherwise are not reasonably able to delete the
14 materials from their filing system.
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16 14. The Parties may execute and acknowledge this Stipulated Protective Order in
17 multiple counterparts, and if executed in such manner, it shall be valid and binding as if all
18 Parties had executed the same original.
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20 15. Nothing in this Stipulated Protective Order shall be construed as a waiver by any
21 Party to assert confidentiality as a basis for refusing to produce documents requested or
22 objecting to the admissibility of any document previously produced.
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24 16. This stipulation, which is executed by the Parties who have appeared in this
25 case at this present point in the litigation, shall be binding on all Parties who subsequently
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1 appear in this coverage action. All newly appearing parties shall be required to execute an
2 acknowledgment that they have read this stipulation and agree to all of its terms. Without
3 such executed acknowledgment, a party subsequently appearing in this case shall not receive
4 and will not be provided with any confidential documents, absent a court order to the contrary.

5 17. During the time this stipulation is under review by the Court and pending the
6 Court's approval of this stipulation, all Parties agree they will abide by the terms of this
7 stipulation.
8

9 **IT IS SO STIPULATED.**

10 DATED this 2nd day of August, 2017.

DATED this 2nd day of August, 2017.

11 HUTCHISON & STEFFEN, PLLC
12

LAW OFFICES OF SEMHA ALWAYA, APC

13 */s/ Cynthia G. Milanowski*
14

/s/ Trelawney Kitchen

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20 *Attorneys for Plaintiff*
21 *Colony Insurance Company*

Attorney for Plaintiff
Colony Insurance Company

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28

1 DATED this 2nd day of August, 2017.

2 SHIVES & ASSOCIATES LIMITED

3
4 /s/ *Martin L. Shives*

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10 *Attorneys for Defendant*
11 *National Fire & Marine Insurance Company*

12 DATED this 2nd day of August, 2017.

13 HAIGHT BROWN & BONESTEEL LLP

14 /s/ *Kristian Moriarty*

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21 *Attorneys for Defendant*
22 *Fireman's Fund Insurance Company*

DATED this 2nd day of August, 2017.

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/s/ *Karie N. Wilson*

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Attorneys for Defendants
Fireman's Fund Insurance Company

23 **IT IS SO ORDERED.**

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26 **UNITED STATES MAGISTRATE JUDGE**

27 Dated: August 7, 2017
28 _____